

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/1/2023
--

November 1, 2023

VIA CM/ECF

MEMORANDUM ENDORSED

Hon. Gregory H. Woods
United States District Court, Southern District of New York
500 Pearl Street, Room 1920, New York, NY 10007

Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo Ltd. (Case No. 1:21-cv-11059-GHW)*

Dear Judge Woods,

Plaintiffs/Counter-Defendants U.S. Bank, National Association, in its capacity as trustee (the “Trustee”), Acis Capital Management, L.P. (“ACM”), and Joshua N. Terry (“Mr. Terry,” and, together with ACM and the Trustee, “Plaintiffs”), Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”), CLO HoldCo, Ltd. (“CLOH”), and NexPoint Diversified Real Estate Trust (“NexPoint,” and, together with DAF and CLOH, “Defendants”), and Counter-Defendant Brigade Capital Management, LP (“Brigade,” and, collective with Plaintiffs and Defendants, the “Parties”) jointly submit this letter pursuant to Paragraph 1.E of the Court’s Individual Rules of Practice in Civil Cases to request a brief extension of expert discovery deadlines set out in the Court’s Case Management Plan and Scheduling Order (the “CMO,” Dkt. 76, as amended by Dkts. 159, 191, 196, and 211). This is the fifth request for an extension. All Parties consent to the Request. Counter-Defendant Highland CLO Funding, Ltd. (“HCLOF”) is not a party to this letter and takes no position with respect to the extension of the deadlines as it is not participating in discovery per the Court’s August 4, 2023, Order (Dkt. 172).

To accommodate scheduling conflicts and as a matter of professional courtesy, the Parties have agreed to jointly seek an extension of the deadline for party-proponents of a claim to offer initial expert disclosures from November 3, 2023, to November 7, 2023, (CMO, para 8(c)); extending the deadline for party-opponents of a claim to offer opposing/rebuttal expert disclosures from December 13, 2023, to December 19, 2023, (CMO, para 8(c)); and extending the close of expert discovery from January 12, 2024, to January 16, 2024 (CMO, para 8(b)).

The Parties and HCLOF respectfully reserve their rights to seek additional revisions. Further, CLOH and DAF respectfully specifically reserve their rights to seek additional revisions depending upon the resolution of their pending motions to compel (Dkts. 205 and 206) and of HCLOF’s pending motion to dismiss (Dkt. 177).

In making this proposal, none of the Parties waive any of their respective substantive or procedural rights, all of which they respectively reserve.

The Parties thank the Court for its attention to this request.

Respectfully Submitted,

/s/ Jonathan E. Pickhardt

Jonathan E. Pickhardt
Blair A. Adams
Brendan Carroll
Misha Boutilier
Michael R. Bloom
Jeffrey Arnier
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000
***Counsel for Plaintiffs ACIS Capital
Management, L.P., and Joshua N. Terry***

/s/ Mark D. Kotwick

Mark D. Kotwick
Thomas Ross Hooper
Julie J. Hong
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
(202) 574-1200
***Counsel for Plaintiff U.S. Bank National
Association, as Trustee***

/s/ Jason C. Hegt

Jason C. Hegt
Alexis Kellert Godfrey
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Jason.Hegt@lw.com
Alexis.Godfrey@lw.com
***Counsel for Counter-Defendant Brigade
Capital Management, LP***

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
Kevin N. Colquitt (*admitted pro hac vice*)
Griffin S. Rubin (*admitted pro hac vice*)
SBAITI & COMPANY, PLLC

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Admitted Pro Hac Vice
Texas Bar No.: 13590100
Fed ID #3476
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Fax: (214) 237-4340
E-mail: smcentire@pmmlaw.com

Roger L. McCleary
Admitted Pro Hac Vice
Texas Bar No.: 133937000
Fed. ID #205
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Fax: (713) 960-7347
E-mail: rmccleary@pmmlaw.com

/s/ Lindsey R. Skibell

Lindsey R. Skibell
E-mail: rskibell@glennagre.com
Jewel K. Tewiah
E-mail: jtewiah@glennagre.com
GLENN AGRE BERGMAN & FUENTES LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Telephone: 212.358.5600
***Counsel for CLO Holdco, Ltd. and The
Charitable Donor Advised Fund, L.P.***

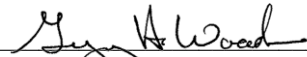
2200 Ross Ave., Suite 4900W
Dallas, TX 75201
(214) 432-2899

***Counsel for NexPoint Diversified Real
Estate Trust***

Application granted. The parties' discovery deadlines are hereby modified as follows: (1) the deadline for completion of expert discovery is extended to January 16, 2024; and (2) the deadline for disclosures, under F.R.C.P. 26(a)(2), of party proponents and party-opponents that intend to offer expert testimony on claims is extended to November 7, 2023 (party-proponents) and December 19, 2023 (party-opponents). The Clerk of Court is directed to terminate the motion pending at Dkt. No. 221.

SO ORDERED.

Dated: November 1, 2023
New York, New York



GREGORY H. WOODS
United States District Judge